



**U.S. Citizenship
and Immigration
Services**

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 10041239

Date: NOV. 27, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a food scientist, seeks second preference immigrant classification as a member of the professions holding an advanced degree or as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not qualify for classification as an individual of exceptional ability, and that he had not had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for EB-2 classification and a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (NYSDOT).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Petitioner presented his Bachelor of Technology degree in industrial chemistry from [redacted] University of Technology [redacted] in Nigeria (2000) and an academic credential evaluation indicating that the aforementioned diploma is the foreign equivalent of a Bachelor's of Science degree in industrial chemistry from an accredited college or university in the United States. In addition, the Petitioner submitted letters from employers and other corroborating evidence demonstrating that he has at least five years of progressive post-baccalaureate experience in food safety and quality assurance management to constitute the equivalent to an advanced degree in his specialty. See 8 C.F.R. § 204.5(k)(2) and 8 C.F.R. § 204.5(k)(3)(i)(B). He has established therefore that he qualifies for classification as a member of the professions holding an advanced degree.⁴

The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the Dhanasar analytical framework.

Regarding his claim of eligibility under Dhanasar's first prong, the Petitioner indicated that he intends to continue his career "as a Food Scientist in the areas of food production, food safety, education, and training." The record includes a September 2019 letter from [redacted] a recruiting and staffing company, stating that the Petitioner "is employed as a Quality Control Associate."⁵ In addition, the Petitioner asserted that he plans to "work as a staff of one of the government entities or pasta producer."⁶ The Petitioner further explained:

I will [sic] like to work as a food safety professional with government agencies or with private bodies to help promote full compliance with food safety regulations. If given the opportunity, my goal is to prevent contamination in the food production chain and help to ensure that food quality and wholesomeness are maintained in order to promote good health to the people.

³ See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ Because the Petitioner qualifies for the underlying visa classification as a member of the professions holding an advanced degree, discussion of his eligibility as an individual of exceptional ability would serve no meaningful purpose.

⁵ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about his current and prospective positions to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the Dhanasar analytical framework.

⁶ The Petitioner identified the U.S. Department of Agriculture's Food Safety and Inspection Service and the U.S. Food and Drug Administration (FDA) as prospective employers, but he did not offer any communications from these agencies relating to future job opportunities or the projects he would undertake on their behalf.

Additionally, the Petitioner stated that his future plans include working “as a graduate assistant while I pursue a Ph.D. in Food Science & Technology in one of the foremost universities.” He further explained that “[a]s a graduate assistant, I would have the opportunity to stimulate and motivate young and upcoming scientist[s] as well as stir up their interest in science and technology, particularly in the area of food science which is my core area of expertise.”⁷

The record includes information about a pasta training program at [redacted] University’s [redacted] (2015), the [redacted] International [redacted] Symposium (2011), food safety certification training, and educational programs offered at the [redacted] Technology Center in [redacted] Germany (2011). In addition, the Petitioner provided articles discussing the U.S. Food Safety Modernization Act, the FDA’s “Blueprint for a New Era of Smarter Food Safety,” and the FDA’s “Retail Food Safety Initiative Action Plan.” He also offered information about foodborne illness, the U.S. food safety system, federal regulatory initiatives, and “Hazard Analysis Critical Control Point” programs. The record therefore shows that the Petitioner’s proposed work as a food safety professional has substantial merit.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” See *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *Id.* We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.

In his appeal brief, the Petitioner asserts that “[i]mplementation and improvement of food safety regimes is critical to securing the food supply for all Americans.” He contends that his proposed endeavor offers “broad, national benefits to U.S. Government, business, and Americans at-large.” The Petitioner further argues that the Director’s conclusion that he has not established that his proposed endeavor is of national importance “is not supported by the evidence in the record.”

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of his work. Although the Petitioner’s statements reflect his intention to provide valuable food safety and training services for his future employers, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar* we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we conclude the record does not show that the Petitioner’s proposed endeavor stands to sufficiently extend beyond his potential employers to impact his field or the U.S. food production system more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic

⁷ With respect to the Petitioner’s proposed graduate studies and work at a U.S. university, the record does not contain documentation from any such institution identifying the specific projects he intends to pursue on the university’s behalf.

effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's food safety projects would reach the level of "substantial positive economic effects" contemplated by Dhanasar. *Id.* at 890. Accordingly, the Petitioner's proposed work does not meet the first prong of the Dhanasar framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the Dhanasar precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in Dhanasar, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the Dhanasar analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.